

## **IC 5-13-12**

### **Chapter 12. Board for Depositories**

#### **IC 5-13-12-1**

##### **Creation; purpose; public deposit insurance fund; tax exemption**

Sec. 1. (a) There is created an independent body politic and corporate, constituting an instrumentality of the state for the public purposes set out in this chapter, to be known as the board for depositories. The board is separate from the state in its corporate and sovereign capacity. The purpose of the board is to insure the safekeeping and prompt payment of all public funds deposited in any depository, to the extent they are not covered by insurance of any federal deposit insurance agency, by maintaining and operating in its own name the public deposit insurance fund under this chapter.

(b) Every depository that has public funds shall pay into the public deposit insurance fund the assessments provided in this chapter and comply with all lawful requirements of the board for depositories. The public deposit insurance fund shall be maintained by the assessments payable by the depositories and by the collection of all claims created under IC 5-13-13 and by the receipt of all interest and other earnings of the insurance fund from any source.

(c) All property in the public deposit insurance fund, the interest or income derived from it or through its use, and all property otherwise held by the board for depositories under this chapter is exempt from all taxes imposed by the state or any political subdivision.

*As added by P.L.19-1987, SEC.14.*

#### **IC 5-13-12-2**

##### **Membership; term; officers; quorum; conduct of meetings; notice; proceedings; record**

Sec. 2. (a) The board for depositories consists of the governor, the treasurer of state, the auditor of state, the chairman of the commission for financial institutions, the chief examiner of the state board of accounts, and four (4) members appointed by the governor all of whom must be residents of Indiana and have had substantial expertise in commercial lending with depositories. No more than two (2) of the four (4) appointees may identify with the same political party. The terms of the appointed members extend for four (4) year periods. Each appointed member holds office for the term of this appointment and serves after the expiration of that appointment until the member's successor is appointed and qualified. Any appointed member may be removed from office by, and at the pleasure of, the governor.

(b) The officers of the board consist of a chairman, a secretary-investment manager, a vice chairman, and other officers the board determines to be necessary. The governor shall name a member of the board to serve as its chairman. The treasurer of state shall serve as the secretary-investment manager of the board. The board, by majority vote, shall elect the other officers. Officers,

except the secretary-investment manager, shall be named or elected for one (1) year terms in January of each year. The members and officers of the board are not entitled to any compensation for their services but are entitled to reimbursement for actual and necessary expenses on the same basis as state employees.

(c) Five (5) members of the board constitute a quorum for the transaction of business, and all actions of the board must be approved by at least five (5) members. The board may adopt, amend, or repeal bylaws and rules for the conduct of its meetings and the number and times of its meetings, and shall hold regular and special meetings as prescribed in its rules. All meetings of the board are open to the public under IC 5-14-1.5. All records of the board are subject to public inspection under IC 5-14-3.

(d) Ten (10) days notice of the time and place of all meetings to determine and fix the assessment rate to be paid by depositories on account of insurance on public funds or the establishment or redetermination of the reserve for losses of the insurance fund shall be given by one (1) publication in a newspaper of general circulation printed and published in the city of Indianapolis. The time, place, notice, and waiver requirements for the members of the board for all meetings shall be determined by its rules. The secretary-investment manager of the board shall enter its proceedings at length in a record provided for that purpose, and the records of the proceedings shall be approved and signed respectively by the chairman or vice chairman and attested by the secretary-investment manager.

*As added by P.L.19-1987, SEC.14.*

### **IC 5-13-12-2.5**

#### **Member participating in board meeting by alternate means of communication**

Sec. 2.5. (a) This section applies to a meeting of the board for depositories at which at least five (5) members of the board are physically present at the place where the meeting is conducted.

(b) A member of the board may participate in a meeting of the board by using a means of communication that permits:

- (1) all other members participating in the meeting; and
- (2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) A member who participates in a meeting under subsection (b) may act as a voting member on official action only if that official action is voted upon by at least five (5) members of the board physically present at the place where the meeting is conducted.

(e) The memoranda of the meeting prepared under IC 5-14-1.5-4 must also state the name of each member who:

- (1) was physically present at the place where the meeting was conducted;
- (2) participated in the meeting by using a means of

communication described in subsection (b); and  
(3) was absent.

(f) A member who participates in a meeting under subsection (b) may not cast the deciding vote on any official action.

*As added by P.L.141-2000, SEC.1.*

### **IC 5-13-12-3**

#### **Function, powers, and purpose**

Sec. 3. (a) The board for depositories exercises essential public functions, and has a perpetual existence. The board has all powers necessary, convenient, or appropriate to carry out and effectuate its public and corporate purposes, including but not limited to the powers to do the following:

- (1) Adopt, amend, and repeal bylaws and rules consistent with this chapter to regulate its affairs and to effect the powers and purposes of the board, all without the necessity of adopting a rule under IC 4-22-2.
- (2) Adopt its budget on a calendar year or fiscal year as it shall determine.
- (3) Sue and be sued in its own name.
- (4) Have an official seal and alter it at will.
- (5) Maintain an office or offices at a place or places within Indiana as it may designate.
- (6) Make and execute contracts and all other instruments with either public or private entities.
- (7) Communicate with the employees of the Indiana development finance authority to the extent reasonably desirable in working on a guarantee of an industrial development obligation or credit enhancement obligation.
- (8) Deposit all uninvested funds of the public deposit insurance fund in a separate account or accounts in financial institutions that are designated as depositories to receive state funds under IC 5-13-9.5. The money in these accounts shall be paid out on checks signed by the chairman or other officers or employees of the board as it shall authorize.
- (9) Take any other act necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter.

(b) In enforcing any obligation of the borrower or any other person under the documents evidencing a guarantee, the board may renegotiate the guarantee, modify the rate of interest, term of the industrial development obligation or credit enhancement obligation, payment of any installment of principal or interest, or any other term of any documents, settle any obligation on the security or receipt of property or the other terms as in its discretion it deems advantageous to the public deposit insurance fund, and take any other action necessary or convenient to such enforcement.

(c) The records of the board for depositories relating to negotiations between it and prospects for industrial development obligation or credit enhancement obligation guarantees are excepted

from the provisions of IC 5-14-3-3.

*As added by P.L.19-1987, SEC.14. Amended by P.L.11-1990, SEC.106; P.L.18-1996, SEC.24.*

### **IC 5-13-12-3.1**

#### **Code of ethics**

Sec. 3.1. (a) The board for depositories shall:

(1) adopt:

(A) rules under IC 4-22-2; or

(B) a policy;

establishing a code of ethics for its employees; or

(2) decide it wishes to be under the jurisdiction and rules adopted by the state ethics commission.

(b) A code of ethics adopted by rule or policy under this section must be consistent with state law and approved by the governor.

*As added by P.L.5-1996, SEC.6.*

### **IC 5-13-12-4**

#### **Secretary-investment manager; powers and duties; pension distribution fund**

Sec. 4. (a) The secretary-investment manager shall administer, manage, and direct the affairs and activities of the board under the policies and under the control and direction of the board. In carrying out these duties, the secretary-investment manager has the power to do the following:

(1) Approve all accounts for salaries and allowable expenses of the board, including, but not limited to:

(A) the employment of general or special attorneys, consultants, and employees and agents as may be necessary to assist the secretary-investment manager in carrying out the duties of that office and to assist the board in its consideration of applications for a guarantee of an industrial development obligation or credit enhancement obligation guarantee; and

(B) the setting of compensation of persons employed under subdivision (A).

(2) Approve all expenses incidental to the operation of the public deposit insurance fund.

(3) Perform other duties and functions that may be delegated to the secretary-investment manager by the board or that are necessary to carry out the duties of the secretary-investment manager under this chapter.

(b) The secretary-investment manager shall keep a record of the proceedings of the board, and shall maintain and be custodian of all books, documents, and papers filed with the board, and its official seal. The secretary-investment manager may make copies of all minutes and other records and documents of the board, and may give certificates under seal of the board to the effect that the copies are true copies. All persons dealing with the board may rely upon the certificates.

(c) Each year, beginning in 2001 and ending in 2011, after the treasurer of state prepares the annual report required by IC 4-8.1-2-14, the secretary-investment manager shall determine:

(1) the amount of interest earned by the public deposit insurance fund during the state fiscal year ending on the preceding June 30, after deducting:

(A) all expenses and other costs of the board for depositories that were not paid from other sources during that state fiscal year; and

(B) all expenses and other costs associated with the Indiana education savings authority that were not paid from other sources during that state fiscal year; and

(2) the amount of interest earned during the state fiscal year ending on the preceding June 30 by the pension distribution fund established by subsection (g).

(d) On or before November 1 of each year, beginning in 2001 and ending in 2011, the public employees' retirement fund shall provide a report to the secretary-investment manager concerning the individual and aggregate payments made by all units of local government (as defined in IC 5-10.3-11-3) during the preceding calendar year for benefits under the police and firefighter pension funds established by IC 36-8-6, IC 36-8-7, and IC 36-8-7.5.

(e) On or before the last business day of November of each year, beginning in 2001 and ending in 2011, the secretary-investment manager shall compute the amount of earned interest to be distributed under this section to each unit of local government (as defined in IC 5-10.3-11-3) in accordance with subsection (h) according to the following formula:

STEP ONE: Add the amount determined under subsection (c)(1) to the amount determined under subsection (c)(2).

STEP TWO: Divide the STEP ONE sum by the aggregate amount of payments made by all units of local government during the preceding calendar year for benefits under the police and firefighter pension funds established by IC 36-8-6, IC 36-8-7, and IC 36-8-7.5, as reported under subsection (d).

STEP THREE: Multiply the STEP TWO quotient by the amount of payments made by each unit of local government during the preceding calendar year for benefits under the police and firefighter pension funds established by IC 36-8-6, IC 36-8-7, and IC 36-8-7.5, as reported under subsection (d).

(f) Subject to subsection (j), on or before the last business day of December of each year, beginning in 2001 and ending in 2011, the secretary-investment manager shall provide to the auditor of state:

(1) a report setting forth the amounts to be distributed to units of local government, as determined under subsection (e); and

(2) a check payable from the public deposit insurance fund to the pension distribution fund established by subsection (g) in an amount equal to the amount determined under subsection (c)(1).

(g) The pension distribution fund is established. The pension distribution fund shall be administered by the treasurer of state. The

treasurer of state shall invest money in the pension distribution fund not currently needed to meet the obligations of the pension distribution fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the pension distribution fund. Money in the pension distribution fund at the end of a state fiscal year does not revert to the state general fund.

(h) Subject to subsection (j), on June 30 and October 1 of each year, beginning in 2002 and ending in 2012, the auditor of state shall distribute in two (2) equal installments from the pension distribution fund to the fiscal officer of each unit of local government identified under subsection (d) the amount computed for that unit under subsection (e) in November of the preceding year.

(i) Each unit of local government shall deposit distributions received under subsection (h) in the pension fund or funds identified by the secretary-investment manager and shall use those distributions to pay a portion of the obligations with respect to the pension fund or funds.

(j) Before providing a check to the auditor of state under subsection (f)(2) in December of any year, the secretary-investment manager shall determine:

- (1) the total amount of payments made from the public deposit insurance fund under IC 5-13-13-3 after June 30, 2001;
- (2) the total amount of payments received by the board for depositories and deposited in the public deposit insurance fund under IC 5-13-13-3 after June 30, 2001; and
- (3) the total amount of interest earned by the public deposit insurance fund after the first of the payments described in subdivision (1).

If the total amount of payments determined under subdivision (1) less the total amount of payments determined under subdivision (2) (referred to in this subsection as the "net draw on the fund") exceeds ten million dollars (\$10,000,000) and also exceeds the total amount of interest determined under subdivision (3), the secretary-investment manager may not provide a check to the auditor of state under subsection (f)(2) and a distribution may not be made from the pension distribution fund under subsection (h) in the following calendar year until the total amount of interest earned by the public deposit insurance fund equals the net draw on the fund. A check may not be provided under subsection (f)(2) and a distribution may not be made under subsection (f) in any subsequent calendar year if a study conducted by the board under section 7(b) of this chapter demonstrates that payment of the distribution would reduce the balance of the public deposit insurance fund to a level insufficient to ensure the safekeeping and prompt payment of public funds to the extent they are not covered by insurance of any federal deposit insurance agency.

*As added by P.L.19-1987, SEC.14. Amended by P.L.281-2001, SEC.1.*

### **IC 5-13-12-5**

#### **Assessment rate; determination and fixing; assessment base; waiver or elimination of assessment rate**

Sec. 5. (a) Subject to the limitations prescribed in this chapter, the board for depositories may fix the assessment rate to provide assets in the fund sufficient to equal the reserve for losses of the fund for the insurance of public funds on deposit in depositories. Effective on July 1, and January 1, of each year, the board shall determine and fix the fair and reasonable assessment rate for each classification of deposit, if any, to be used by depositories in determining the assessments payable during the succeeding six (6) month period. This determination shall be made by the board before or as soon as practicable after the applicable July 1, or January 1. In fixing the rate, if any, the board shall consider the amount of public funds currently on deposit, the liabilities of the insurance fund, contingent and accrued, and the determination of the board on the amount of the reserve for losses of the insurance fund as set out in section 7(b) of this chapter. For any six (6) month period the maximum assessment rate that may be fixed by the board is two percent (2%). The board may lower or waive the assessment on any or all classifications of deposit if in its discretion it determines that a lower rate or waiver will not prevent the fund from attaining sufficient assets to equal the reserve for losses. If, at the beginning of any six (6) month period, no action has been taken by the board for depositories fixing the assessment rate, if any, on public funds for the succeeding six (6) month period, the assessment rate is the same rate, if any, in effect during the preceding six (6) month period. Whenever as of July 1, or January 1, the value of the assets in the fund equals or exceeds the reserve for losses, the board shall eliminate the assessment requirement for the succeeding six (6) month period for each classification of deposit.

(b) During any period when an assessment rate is in effect, the assessment base for each depository of public funds shall be determined monthly. The assessment base must be equal to the sum total of all the minimum balances of each classification of public funds on deposit in each and all accounts during the month, the minimum balance of each account being taken respectively as of the date on which it occurs. On or before the second day of each month in which an assessment rate is in effect, each depository shall compute the amount of the assessment due from it to the insurance fund on account of public funds on deposit with it during the preceding month. The amount of the monthly assessment, if any, is the product obtained by multiplying one-twelfth (1/12) times the assessment base for the month for which the assessment is being computed.

(c) During the time the assessment rate on public funds has been waived or eliminated by the board for depositories, the respective depositories are not obligated to pay any assessment but shall continue to prepare and file the reports that would otherwise be required to be prepared and filed under this chapter.

*As added by P.L.19-1987, SEC.14.*

#### **IC 5-13-12-6**

##### **Depositories; duty to file monthly report and pay assessment to insurance fund; failure to pay; forms**

Sec. 6. (a) On or before the fifth day of each month, every depository that had public funds on deposit with it during the preceding month shall:

(1) file with the board for depositories a certified report under oath showing for the preceding month the amount of the assessment base and the amount of the monthly assessment due the insurance fund, as determined under section 5 of this chapter; and

(2) pay the insurance fund the amount of the monthly assessment it is required to certify. The board for depositories may waive all or part of the reporting requirement under this section during any period when the board does not levy an assessment.

(b) If any depository fails to pay the insurance fund on or before the fifth day of each one (1) month period the full assessment due from it for the preceding one (1) month period on account of public funds deposited with it, the depository is liable for double the assessment. This amount may be recovered in any court of competent jurisdiction in a civil action by the state on the relation of the board for depositories.

(c) The state board of accounts, with the approval of the attorney general, shall prepare and prescribe the forms of reports required by this section.

*As added by P.L.19-1987, SEC.14.*

#### **IC 5-13-12-7**

##### **Insurance fund; management and operation; establishment of reserve; determination of profit distribution; investment; limitations; immunity of members**

Sec. 7. (a) The board for depositories shall manage and operate the insurance fund. All expenses incident to the administration of the fund shall be paid out of the money accumulated in it subject to the direction of the board for depositories.

(b) Effective January 1 and July 1 in each year, the board shall before those dates redetermine the amount of the reserve to be maintained by the insurance fund. The establishment or any change in the reserve for losses shall be determined by the board based on a study to be made or updated by actuaries, economists, or other consultants based on the history of losses, earnings on the funds, conditions of the depositories, economic conditions affecting particular depositories or depositories in general, and any other factors that the board considers relevant in making its determination. The reserve determined by the board must be sufficient to ensure the safekeeping and prompt payment of public funds to the extent they are not covered by insurance of any federal deposit insurance agency.



(c) At the end of each biennial period during which depositories have had public funds on deposit under this chapter and paid the assessments levied by the board, the board shall compute its receipts from assessments and all other sources and its expenses and losses and determine the profit derived from the operation of the fund for the period. Until the amount of the reserve for losses has been accumulated, all assessments levied for a biennial period shall be retained by the fund. The amount of the assessments, if any, levied by the board shall, to the extent the fund exceeds the reserve for losses at the end of a biennial period commencing July 1 of each odd year, be distributed to the depositories that had public funds on deposit during the biennial period in which the assessments were paid. The distribution shall be made to the respective depositories in the proportion that the total assessments paid by each depository during that period bears to the total assessments then paid by all depositories. A distribution to which any closed depository would otherwise be entitled shall be set off against any claim that the insurance fund may have against the closed depository.

(d) The board may invest, reinvest, and exchange investments of the insurance fund in excess of the cash working balance in any of the following:

(1) In bonds, notes, certificates, and other valid obligations of the United States, either directly or, subject to the limitations in subsection (e), in the form of securities of or other interests in an open-end no-load management-type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, as amended (15 U.S.C. 80a et seq.).

(2) In bonds, notes, debentures, and other securities issued by a federal agency or a federal instrumentality and fully guaranteed by the United States either directly or, subject to the limitations in subsection (e), in the form of securities of or other interests in an open-end no-load management-type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, as amended (15 U.S.C. 80a et seq.).

(3) In bonds, notes, certificates, and other valid obligations of a state, or of an Indiana political subdivision that are issued under law, the issuers of which, for five (5) years before the date of the investment, have promptly paid the principal and interest on their bonds and other legal obligations.

(4) In bonds or other obligations of the state office building commission.

(5) In investments permitted the state under IC 5-13-10.5.

(6) In guarantees of industrial development obligations or credit enhancement obligations, or both, for the purposes of retaining and increasing employment in enterprises in Indiana, subject to the limitations and conditions set out in this subdivision, subsection (e), and section 8 of this chapter. An individual guarantee of the board under this subdivision must not exceed

eight million dollars (\$8,000,000).

(7) In guarantees of bonds or notes issued under IC 5-1.5-4-1, subject to the limitations and conditions set out in subsection (e) and section 8 of this chapter.

(8) In bonds, notes, or other valid obligations of the Indiana development finance authority that have been issued in conjunction with the authority's acquisition, development, or improvement of property or other interests for an industrial development project (as defined in IC 4-4-10.9-11) that the authority has undertaken for the purposes of retaining or increasing employment in existing or new enterprises in Indiana, subject to the limitations in subsection (e).

(9) In notes or other debt obligations of counties, cities, and towns that have been issued under IC 6-1.1-39 for borrowings from the industrial development fund under IC 4-4-8 for purposes of retaining or increasing employment in existing or new enterprises in Indiana, subject to the limitations in subsection (e).

(10) In bonds or other obligations of the Indiana housing finance authority.

(e) The investment authority of the board under subsection (d) is subject to the following limitations:

(1) For investments under subsections (d)(1) and (d)(2), the portfolio of an open-end no-load management-type investment company or investment trust must be limited to:

(A) direct obligations of the United States and obligations of a federal agency or a federal instrumentality that are fully guaranteed by the United States; and

(B) repurchase agreements fully collateralized by obligations described in clause (A), of which the company or trust takes delivery either directly or through an authorized custodian.

(2) Total outstanding investments in guarantees of industrial development obligations and credit enhancement obligations under subsection (d)(6) must not exceed the greater of:

(A) ten percent (10%) of the available balance of the insurance fund; or

(B) fourteen million dollars (\$14,000,000).

(3) Total outstanding investments in guarantees of bond bank obligations under subsection (d)(7) must not exceed the greater of:

(A) twenty percent (20%) of the available balance of the insurance fund; or

(B) twenty-four million dollars (\$24,000,000).

(4) Total outstanding investments in bonds, notes, or other obligations of the Indiana development finance authority under subsection (d)(8) may not exceed the greater of:

(A) fifteen percent (15%) of the available balance of the insurance fund; or

(B) twenty million dollars (\$20,000,000).

However, after June 30, 1988, the board may not make any

additional investment in bonds, notes, or other obligations of the Indiana development finance authority, and the board may invest an amount equal to the remainder, if any, of:

- (i) fifteen percent (15%) of the available balance of the insurance fund; minus
- (ii) the board's total outstanding investments in bonds, notes, or other obligations of the Indiana development finance authority;

in guarantees of industrial development obligations or credit enhancement obligations, or both, as authorized by subsection (d)(6). In such a case, the outstanding investments, as authorized by subsections (d)(6) and (d)(8), may not exceed in total the greater of twenty-five percent (25%) of the available balance of the insurance fund or thirty-four million dollars (\$34,000,000).

(5) Total outstanding investments in notes or other debt obligations of counties, cities, and towns under subsection (d)(9) may not exceed the greater of:

- (A) ten percent (10%) of the available balance of the insurance fund; or
- (B) twelve million dollars (\$12,000,000).

(f) For purposes of subsection (e), the available balance of the insurance fund does not include the outstanding principal amount of any fund investment in a corporate note or obligation or the portion of the fund that has been established as a reserve for losses.

(g) Except as provided in section 4 of this chapter, all interest and other income earned on investments of the insurance fund and all amounts collected by the board accrue to the fund.

(h) Members of the board and any officers or employees of the board are not subject to personal liability or accountability by reason of any investment in any of the obligations listed in subsection (d).

(i) The board shall, when directed by the state board of finance constituted by IC 4-9.1-1-1, purchase the loan made by the state board of finance pursuant to IC 4-10-18-10(i). The loan shall be purchased by the board at a purchase price equal to the total of:

- (1) the principal amount of the loan;
- (2) the deferred interest payable thereon; and
- (3) accrued interest to the date of purchase by the board.

Members of the board and any officers or employees of the board are not subject to personal liability or accountability by reason of the purchase of the loan under this subsection.

*As added by P.L.19-1987, SEC.14. Amended by P.L.67-1989, SEC.2; P.L.69-1989, SEC.1; P.L.11-1990, SEC.107; P.L.1-1992, SEC.10; P.L.28-1993, SEC.6; P.L.18-1996, SEC.25; P.L.281-2001, SEC.2.*

### **IC 5-13-12-8**

**Industrial development obligation or credit enhancement obligation guarantees; limitations; conditions; claims, losses, or debts**

Sec. 8. (a) The board for depositories, in making the industrial

development obligation or credit enhancement obligation guarantees authorized under section 7(d)(6) of this chapter, shall comply with the following limitations:

(1) A guarantee shall be made only of industrial development obligations or credit enhancement obligations for the purpose of retaining, retaining and expanding, or bringing significant employment into Indiana, as determined by the board under subdivision (3)(A).

(2) Each industrial development obligation or credit enhancement obligation must be guaranteed not only by the board but also by the Indiana development finance authority created by IC 4-4-11. Each guarantee must provide that in the event of a valid claim of loss by the lender, the lessor, or the issuer of the credit enhancement arising under the industrial development obligation or credit enhancement documents, the amount of the loss, up to two million dollars (\$2,000,000), shall first be paid by the industrial development project guaranty fund created by IC 4-4-11-16, and only the remainder of the loss, if any, shall to the extent guaranteed be paid by the public deposit insurance fund. Neither fund is responsible for the amount due from the other under its guarantee.

(3) The guarantee of the industrial development obligation or credit enhancement obligation by the board for depositories must be recommended by the Indiana development finance authority. Subject to that recommendation, the board for depositories may make the guarantee if it determines:

(A) that the guarantee creates a reasonable probability that loss in Indiana employment that would occur will be significantly reduced or that Indiana's employment will be significantly expanded;

(B) that the consequent reduction in employment loss or the expansion in employment will enhance the economic stability of the community or communities in the state where the borrower or lessee conducts its business;

(C) that there is reasonable probability that the industrial development obligation will be repaid or satisfied or that the credit enhancement will be satisfied; and

(D) that the industrial development obligation or credit enhancement obligation and guarantee are protected against loss and the borrower or lessee has agreed to pay the insurance fund a guarantee premium annually as provided in subdivision (6).

(4) Protection against loss on the industrial development obligation or credit enhancement obligation guaranteed will be provided:

(A) in loan transactions by:

(i) a valid security agreement;

(ii) mortgage;

(iii) combination of (i) and (ii); or

(iv) other document; and

- (B) in lease transactions by the guaranteed party's rights as owner of the leased property.
- (5) The term of the guarantee must not exceed twenty (20) years. The amount of the guarantee provided by the board, together with the corresponding guarantee to be provided by the industrial development project guaranty fund under subdivision (2), must not exceed:
  - (A) the lesser of:
    - (i) ninety percent (90%) of the unpaid balance of the obligation; or
    - (ii) ninety percent (90%) of the appraised fair market value of the real estate;if the obligation is backed by real estate;
  - (B) the lesser of:
    - (i) seventy-five percent (75%) of the unpaid balance of the obligation; or
    - (ii) seventy-five percent (75%) of the appraised fair market value of the equipment;if the obligation is backed by equipment; or
  - (C) a weighted average of the figures derived under clauses (A)(ii) and (B)(ii) if the obligation is backed by real estate and equipment.
- (6) The guarantee premium to be received by the public deposit insurance fund for the guarantee must be at an annual percentage rate on the outstanding principal amount of the industrial development obligation or the credit enhancement obligation of not less, in the discretion of the board, than the market rate for guarantees, mortgage insurance rates, or letters of credit used for similar purposes at the time the guarantee is made. However, the annual percentage rate must not exceed two percent (2%) of the outstanding principal obligation.
- (b) The following conditions apply to the making of bond bank obligation guarantees under section 7(d)(7) of this chapter:
  - (1) Each bond bank obligation guaranteed must be secured by a pledge of securities of a qualified entity (as defined in IC 5-1.5-1-8) under an indenture of trust requiring an adequate debt reserve fund.
  - (2) The board for depositories shall fix the one (1) time or annual charge to be paid by the bond bank for each guarantee in an amount considered by the board to be appropriate and consistent with the market rate for that guarantee, taking into consideration the terms of the indenture applicable to the bond bank obligation.
  - (3) The board for depositories may agree to other terms for each guarantee that the secretary-investment manager certifies as being commercially reasonable and that the board, in its judgment, determines to be proper.
- (c) Any claim, loss, or debt arising out of any guarantee authorized by section 7(d)(6) or 7(d)(7) of this chapter is the obligation of the board for depositories payable out of the public

deposit insurance fund only and does not constitute a debt, liability, or obligation of the state or a pledge of the faith and credit of the state. The document evidencing any guarantee must have on its face the words, "The obligations created by this guarantee (or other document as appropriate) do not constitute a debt, liability, or obligation of the state or a pledge of the faith and credit of the state but are obligations of the board for public depositories and are payable solely out of the public deposit insurance fund, and neither the faith and credit nor the taxing power of the state is pledged to the payment of any obligation hereunder."

(d) Any claim of loss by a lender or lessor under a guarantee authorized by section 7(d)(6) or 7(d)(7) of this chapter, at the time it is made in writing to the board, has priority against the fund on all claims made after that time.

*As added by P.L.19-1987, SEC.14. Amended by P.L.11-1990, SEC.108.*

### **IC 5-13-12-8.5**

#### **Loan guarantee for leading Indiana business**

Sec. 8.5. (a) Notwithstanding any other law, including sections 7 and 8 of this chapter, the board for depositories shall make a loan guarantee (as defined in IC 4-4-11-16.1) in an amount not to exceed thirty-five million dollars (\$35,000,000) for a leading Indiana business (as defined in IC 4-4-11-16.1).

(b) The board for depositories, in making the loan guarantee for a leading Indiana business under this section, shall comply with the following limitations:

(1) Each loan guaranteed under this section must be guaranteed not only by the board for depositories but also by the Indiana development finance authority under IC 4-4-11-16.1. Each guarantee must provide that in the event of a valid claim of loss by the lender, the lessor, or the issuer of the loan, the amount of the loss, up to two million dollars (\$2,000,000), shall first be paid by the industrial development project guaranty fund created by IC 4-4-11-16, and only the remainder of the loss, if any, shall to the extent guaranteed be paid by the public deposit insurance fund. Neither fund is responsible for the amount due from the other under its guarantee.

(2) Protection against loss on the loan guarantee will be secured through collateral evidenced by a valid mortgage, security agreement, or other agreement or document. The collateral and security position of the board for depositories and the Indiana development finance authority shall be on a parity with each other and must be senior to the collateral or security interest of another state, including without limitation any authority, board, commission, or instrumentality of the other state and any political subdivision or other governmental or quasi-governmental unit of the other state, participating in the industrial development project or a related project.

(3) The term of a loan guarantee made under this section may

not exceed ten (10) years.

(4) The loan guarantee by the board for depositories must be recommended by the Indiana development finance authority upon the Indiana development finance authority's determination and certification to the board for depositories:

(A) that the loan guarantee will be for a leading Indiana business under IC 4-4-11-16.1; and

(B) that the loan guarantee is necessary for an industrial development project by a leading Indiana business that is in furtherance of the purposes of the Indiana development finance authority and that complies with IC 4-4-11-16.1.

(5) Banks and financial institutions designated as eligible to receive public funds by the board for depositories shall be given a preference to provide the loan or other form of commercial financing to be guaranteed under this section, provided that such banks or financial institutions can provide terms and conditions for the loan that are substantially similar to and no more costly than the terms and conditions available to a leading Indiana business from other banks or commercial lending institutions.

(6) The Indiana development finance authority shall determine the guarantee premium to be received by the public deposit insurance fund and by the Indiana development finance authority for the loan guarantee. The guarantee premium shall be determined at the market rate then in effect for guarantees, mortgage insurance rates, or letters of credit used for similar purposes.

(c) Members of the board for depositories and any officers or employees of the board for depositories are not subject to personal liability or accountability for or by reason of the loan guarantee made under this section.

(d) This section constitutes all the authority required for the board for depositories to make a loan guarantee to a leading Indiana business. This section is in addition and not in limitation of the board for depositories other powers heretofore or hereafter existing under this chapter.

(e) Any claim, loss, or debt arising out of any joint guarantee under this section or IC 4-4-11-16.1 is the obligation of the board for depositories or the Indiana development finance authority, payable out of the public deposit insurance fund or the industrial development project guaranty fund, as special funds only and as provided in this section and IC 4-4-11-16.1, and does not constitute a debt, liability, or obligation of the state or a pledge of the faith and credit of the state. The document evidencing any guarantee must have on its face the words, "The obligations created by this guarantee (or other document as appropriate) do not constitute a debt, liability, or obligation of the state or a pledge of the faith and credit of the state, but are obligations of the board for depositories or the Indiana development finance authority and are payable solely out of the funds provided therefor, as special funds, and neither the faith and

credit nor the taxing power of the state is pledged to the payment of any obligation hereunder."

(f) This section expires December 31, 2002.

*As added by P.L.291-2001, SEC.147.*

#### **IC 5-13-12-9**

##### **Investment in instruments of indebtedness of credit corporation issued certificate of election by secretary of state**

Sec. 9. In addition to the investments authorized in section 7(d) of this chapter, the board may invest, reinvest, and exchange investments of the insurance fund in excess of the cash working balance in instruments of indebtedness of a credit corporation to which the secretary of state has issued a certificate of election under IC 23-6-4-8.

*As added by P.L.19-1987, SEC.14.*

#### **IC 5-13-12-10**

##### **Subordination of valid security agreement, mortgage, combinations thereof, or other appropriate document securing direct obligations**

Sec. 10. With regard to direct obligations of the Indiana development finance authority that have been issued in conjunction with an industrial development project undertaken by the authority, including those obligations that are guaranteed by the board under this chapter or purchased by the board under section 7(d)(8) of this chapter, the board may upon the request of the authority permit a subordination of any valid security agreement, mortgage, combinations thereof, or other appropriate document securing the direct obligations, if the board in its discretion determines that the subordination is reasonably necessary to accomplish the objectives of the industrial development project.

*As added by P.L.19-1987, SEC.14. Amended by P.L.11-1990, SEC.109.*

#### **IC 5-13-12-11**

##### **Loans to commuter transportation district**

Sec. 11. (a) In addition to the authority given the board for depositories in section 7 of this chapter, the board may lend, from that portion of the insurance fund reserved for economic development, to any commuter transportation district that is established under IC 8-5-15 an amount not to exceed two million six hundred thousand dollars (\$2,600,000).

(b) The board of trustees of a district that receives a loan under this section shall do the following:

(1) Use the loan proceeds only for paying or reimbursing the following costs and expenses of the district:

(A) Property and casualty insurance premiums.

(B) Trackage lease payments.

(C) Traction power expenses.

(D) Conducting a study of commuter transportation within



the district under P.L.48-1986.

(E) Any expenses incurred by the district in the ordinary course of providing commuter rail service.

(2) Develop a financial plan for commuter rail service within the district for each year during the loan period. The financial plan must contain the elements prescribed in, and be subject to review and approval under, subsection (c).

(3) Repay the loan in eight (8) annual installments on dates determined by the board for depositories, subject to the following conditions:

(A) The first payment must be made on July 1, 1988.

(B) Each annual payment must equal one-eighth (1/8) of the principal of the loan plus interest at a rate determined by the board for depositories. The rate of interest must not be:

(i) lower than the lowest interest rate set by the state board of finance for a loan under IC 4-4-8-8 before April 1, 1986; or

(ii) greater than the average yield on investments made by the board in January, February, and March of 1986.

(4) As required by subsection (d), report annually to the board for depositories on compliance with the financial plan developed under subsection (c).

(5) Notwithstanding subdivision (3), pledge to repay the balance of the loan plus interest at a time and in a manner specified by the board for depositories whenever the board for depositories determines that one (1) of the following has occurred:

(A) The board of trustees of the district has failed to develop a financial plan that substantially complies with subsection (c).

(B) There has not been substantial compliance with a financial plan.

(C) The board of trustees of the district has failed to make a payment on the date established under subdivision (3).

If repayment is required under this subdivision, the treasurer of state shall transfer the amount necessary to the insurance fund from the allocation to the district from the public mass transportation fund for the remainder of the state fiscal year in which the repayment is required. If the amount transferred from the allocation is insufficient, the balance shall be transferred from the commuter rail service fund until the repayment is complete.

(c) Before December 1 of each year, the board of trustees of a district receiving a loan under this section shall submit to the board for depositories, the Indiana department of transportation, and the budget committee a financial plan for the following calendar year. The plan must provide for an annual operating budget under which expenses do not exceed revenues from all sources. The financial plan may identify supplemental revenue sources from within the district that will be dedicated during the year to commuter rail service in the

district. Within sixty (60) days after the plan is submitted, the board for depositories shall determine if the financial plan complies with this subsection. In making its determination, the board for depositories shall consider the recommendations of the budget committee, which shall base its recommendations on the department of transportation's evaluation of the financial plan.

(d) Before April 1 of the second calendar year after a loan under this section is made and before April 1 of each year thereafter, the board of trustees of a district receiving a loan shall submit to the board for depositories, the Indiana department of transportation, and the budget committee a report covering the preceding calendar year. The report must summarize the district's compliance with the financial plan submitted under subsection (c) and must contain other information as the board for depositories may require. Before July 1 of that year, the board for depositories shall determine if the district has substantially complied with the financial plan. In making its determination, the board for depositories shall consider the recommendations of the budget committee, which shall base its recommendations on the Indiana department of transportation's evaluation of the report.

(e) After January 1, 1988, the board for depositories and the board of trustees of a district receiving a loan under this section may agree to an early repayment of the loan. If an early repayment is agreed to, the board for depositories may guarantee a loan obtained by the board of trustees under conditions established by the board for depositories. These conditions may include the requirement that the district pledge to repay from its allocations from the public mass transportation fund and the commuter rail fund service any loss sustained by the insurance fund as a result of the guarantee.

*As added by P.L.19-1987, SEC.14. Amended by P.L.18-1990, SEC.10; P.L.18-1996, SEC.26.*